IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1278

CHARLES ADAMS, LARRY WASHINGTON, GEORGE W. ANDREWS, BILLY LOVETT, and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Petitioners*,

v.

FEDERAL EXPRESS CORPORATION, *Respondent*.

PETITIONERS' REPLY TO THE BRIEF IN OPPOSITION

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Petitioners, Charles Adams, Larry Washington, George W. Andrews, Billy Lovett and International Brotherhood of Teamsters, reply to the Respondent's Brief in Opposition as follows:

1. In attempting to distinguish *Texas & N.O. R.R. v. Brotherhood of Ry. Clerks*, 281 U.S. 548, from the instant case, Respondent points out that the Railroad had once recognized the Brotherhood as the representative of its employees. (Op. Cert., at 12). This scarcely obscures the fact that the Railroad sharply contested the Brotherhood's representative status and withdrew

voluntary recognition, while engaging in coercive activities against the Brotherhood's representatives similar to those alleged in the instant case. The Brotherhood, like the Union Petitioner here, was not certified as the employees' representative. Consequently the Sixth Circuit's decision in the instant case, by conditioning a union's standing on "certification," precludes judicial recourse against carrier interference by all uncertified labor organizations, regardless of whether the interference is designed to defeat representation once recognized or initially sought.

2. Respondent's bare assertion that the lower Court, applying the criteria established in *Cort* v. *Ash*, 422 U.S. 66, 78, "correctly concluded that the Railway Labor Act confers no *implied* right of action upon an uncertified union . . . " (Op. Cert., at 16) underscores the necessity for review in this case. For the issue before the Sixth Circuit was not, as in *Cort*, the preliminary question of whether a private remedy was implicit in a statute not expressly providing one. 442 U.S. at 78. See *National R.R. Passengers Corp.* v. *Passengers Ass'n*, 414 U.S. 453, 456. This threshold question was laid to rest over forty years ago, *Texas & N.O. R.R.* v. *Brotherhood of Ry. Clerks, supra*; *Virginian Ry.* v. *System Federation No. 40*, 300 U.S. 515, as the Sixth Circuit itself reluctantly recognized. (Pet., App. B, at 11a) Thus it was necessary for the lower Court to reach the pure "standing" question of whether the Petitioner Union was among "the class of persons who may invoke the courts' decisional and remedial powers" under Section 2, Third and Fourth of the Act. See *Warth* v. *Seldin*, 422 U.S. 490, 499. This question is not determinable by reference to the *Cort* analysis.

In answering the "who" question by applying the "whether" analysis,[1] the Sixth Circuit disregarded standards previously established by this Court for determining the standing of an association to sue in its own right and on behalf of those it purports to represent. Thus the Sixth Circuit ignored the fact that the Carrier's alleged unlawful conduct adversely affected the relationship between the Union and employees, whose rights under the Act assertedly were violated. *Warth* v. *Seldin, supra*, 422 U.S. at 510; *Sullivan* v. *Little Hunting Park*, 396 U.S. 229, 237. Nor did the lower Court consider the Union's standing to represent its employee supporters, who had expressly authorized it to represent them "in all negotiations of wages, hours and working conditions in accordance with the Railway Labor Act" (JA 420), and who would have been directly benefited by grant of the injunctive relief sought. 422 U.S. at 515; *National Motor Freight Ass'n* v. *United States*, 372 U.S. 246.

Of equal importance was the lower Court's failure to consider the Union's standing to contest the Car-

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[1] Cf. *Piper* v. *Chris-Craft Indus., Inc.*, 45 U.S.L.W. 4182, 4196-97 n.4 (Stevens, J., dissenting). In *Chris-Craft*, the majority held that § 14(e) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78n(e), did not impliedly create a cause of action for damages in favor of an unsuccessful tender offeror in a contest for control of a corporation. In this Court's view, tender offerors were not intended beneficiaries of the legislation, inasmuch as it was designed to bring their previously unregulated conduct under Federal control. The Court declined to state whether a damage action would be available to shareholders (*id.* at 4192 n.25), and further declined to reach the question "whether as a general proposition a suit in equity for injunctive relief, as distinguished from an action for damages, would lie in favor of a tender offeror under either § 14(e) or Rule 10b-6." *Id.* at 4194 n.33. Thus the question of whether civil enforcement of any kind was available to anyone under § 14(e) was left unanswered by the Court.

rier's alleged interference with its organizational activities which necessarily were carried on in large measure by its employee supporters Their organizational activities, plainly protected by Section 2, Third and Fourth, cannot be separated from the Union's organizational drive because a union can act only through those persons who adhere to it. *Allee* v. *Medrano*, 416 U.S. 802, 819 n.13. In this sense, therefore, the Union activities frustrated by the Carrier's alleged misconduct are the very activities the Act was designed to protect. *NAACP* v. *Button*, 371 U.S. 415, 428. Finally the Sixth Circuit gave no consideration to whether denial of the Union's "standing" claim under Section 2, Third and Fourth, "would . . . be tantamount to a denial of private relief." *J. I. Case Co.* v. *Borak*, 377 U.S. 426, 432.

Accordingly, Respondent's assertion that the Court below applied the *Cort* analysis correctly, while doubtful at best, is beside the point. For the source of the Sixth Circuit's error lay in its reliance on inappropriate criteria to the exclusion of factors this Court has held must be considered in determining "standing" issues. These factors, had they been considered and properly evaluated, would have led the lower Courts to a different result. Unless reviewed by this Court, therefore, the Sixth Circuit's decision in the instant case will have a far-reaching, detrimental impact on the Federal law of "standing" and on labor relations in the rail and air industries. Particularly since this Court has so recently articulated the principles of "standing" in detail, the Sixth Circuit's disregard of these principles in favor of an inappropriate application of the *Cort* analysis should not be permitted to stand.

3. Respondent's reliance on *General Committee* v. *Missouri-Kansas-Texas R.R.*, 320 U.S. 323, is misplaced. In that case, the issue was whether the District Court was empowered by the statute to adjudicate the competing jurisdictional claims of two unions, each of which represented different crafts. The work in dispute involved emergency engineer service. This Court held that the District Court was without power to resolve the controversy, since jurisdictional disputes were not among the problems Congress placed "in the adjudicatory channel." *Id.* at 337. On the other hand, this Court made clear that the specific statutory commands and prohibitions contained in Section 2, Third and Fourth are "enforceable by judicial decree." *Id.* at 330-31.

4. The suggestion by Respondent (Op. Cert., at 18) that both lower Courts correctly applied the standards for injunctive relief set forth in *North Avondale Neighborhood Ass'n* v. *Cincinnati Metropolitan Housing Authority*, 464 F.2d 486 (C.A. 6), misses the point. The issue raised by the Petition is not the factual question of whether the individual Petitioners met the stringent criteria established by the lower Courts for preliminary relief. Rather Petitioners maintain that the criteria themselves are inappropriate in suits for enforcement of the Railway Labor Act, since such actions involve "a matter of public concern." *Virginian Ry.* v. *System Federation No. 40, supra*, 300 U.S. at 552. The Sixth Circuit's failure to apply the standards for preliminary relief it has announced in public interest cases (*State of Ohio ex rel. Brown* v. *Callaway*, 497 F.2d 1235 (C.A. 6)), together with its adoption of especially stringent standards, tends to render employee organizational rights "illusory." (Pet., App. B, at 15a)

5. Respondent alleges that the Union's failure to challenge the results of the National Mediation Board referendum conducted among the Mechanics and Related Employees craft or class constitutes a concession that the Carrier did not engage in pre-election conduct which was violative of the Act. (Op. Cert., at 19) The pertinence of this argument, not to mention its accuracy, is highly suspect. The regulations promulgated by the Mediation Board pursuant to Section 2, Ninth do not establish a procedure for protesting the outcome of a representation election. See 29 C.F.R. § 1206.1-8. Indeed, since Respondent's employees are unrepresented by any organization, a new representation proceeding may be initiated at any time (29 C.F.R. § 1206.4(b) ("Note")), without the need for setting aside the old election. Moreover, it has long been recognized that new elections are inadequate to redress massive employer pre-representation election misconduct. *NLRB* v. *Gissel Packing Co.*, 395 U.S. 575.

WHEREFORE, certiorari should be granted as prayed.

Respectfully submitted,

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